IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4267 OF 2005

Dnyansagar Shikshan Prasarak Mandal
And Bahu-Udeshiya Samshta,
Solapur. ... ... Petitioner

v/s.

The Secretary, The School Education
& Sports Department & ors. ... Respondents

Mr.S.G. Kudle for petitioner.

Mr.C.R.Sonawane, AGP for res.Nos.1, 4 and 5.

Mr.S.C.Halli for res.Nos.3 & 7.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 26th October 2005

ORAL ORDER : (Per H.L.Gokhale, J.)

1. Heard the learned Counsel for the parties.

2. This Petition is filed by the Educational Institution which is running a Secondary school at village Korsegaon, Taluka Akkalkot, District Solapur, to challenge the shifting of respondent No.7-school to this village from Akkalkot. The case of the petitioner is that respondent No.7-school was only on paper and it was not, in fact, in existence at Akkalkot and, therefore, there was no question of shifting such a school to village Korsegaon. It is submitted in the

Petition that it is because of the political rivalry between respondent No.3-Minister who is behind respondent No.7-school and the Management of the petitioner which has led to the attempt to shift the school from Akkalkot to village Korsegaon. It is further submitted in the Petition that this is being done only because respondent No.3 is a Minister and it is because of the pressure brought about by him that all these decisions are being taken which are contrary to the record.

3. Mr.Kudle, learned Counsel appearing for the petitioner, submitted that from the record of the S.S.C. Board also it is seen that the students of the petitioner-school have appeared for the 10th standard examination during last two years. To harass the petitioner-school, it is sought to be contended that its school building is outside village Korsegaon and within the area of adjoining village Kumthe. The case of the petitioner is that it is not so and that it is within the same village. In any case, assuming it is outside, it is at a distance of hardly one kilo meter or so even according to the respondents.

4. It is pointed out that the population of

village Korsegaon and that of village Kumthe, even when taken together, is so less that it can justify hardly one school. Even if both the villages are taken together then also they do not have a population of more than 2000. On any consideration, it is, therefore, submitted in the Petition that the Government should not have allowed this school to be shifted from Akkalkot to Korsegaon.

5. On behalf of respondent No.7-school, all these allegations are denied and it is tried to contend to the contrary. It is contended that respondent No.7-school was running at Akkalkot and that the petitioner-school does not have proper amenities and it is for all these reasons that the shifting had been permitted.

6. When the Petition came up for consideration, this Court granted injunction on 18th July 2005 on the order dated 5th May 2005 passed by the Government, which was under challenge, thereby restraining respondent No.7-school from running at village Korsegaon.

7. Mr.Kudle, learned Counsel appearing for the petitioner, has drawn our attention to a

Division Bench judgment in **Ranojirao Shikshan Sanstha, Mhasave vs. State of Maharashtra & ors. reported in 2005 (4) Maharashtra Law Journal page 207**, to which one of us (H.L.Gokhale, J.) was a Member. That was also a similar case of a village with a population of less than 3,200. When one school was running in that village for quite some time, the Zilla Parishad had proposed to start a secondary division. By that judgment, the Zilla Parishad was directed to close down those divisions so that there is no unhealthy competition. This was on the basis of the Government directions in GR dated 10h August 1977. Mr.Kudle submits that the present case is also of a similar type.

8. We quite see the merit in the submissions of Mr.Kudle. Respondent No.3-Minister has, however, now filed an affidavit stating that respondent No.3 and respondent No.7 are ready to relocate their school at Akkalkot. We have taken the affidavit on record. From this affidavit, we take it that respondent Nos.3 and 7 are no longer desirous of continuing their school at village Korsegaon. They were, in fact, injuncted by our order passed on 18th July 2005 from running it. However, assuming that they still continued to run

it, in view of this affidavit, they shall close the same now hereafter. The students of that school will be at liberty to join the school run by the petitioner-school and Mr.Kudale states that if they want to join the petitioner-school, they are welcome.

9. In the circumstances, the order dated 5th May 2005 passed by the State Government permitting this shifting of respondent No.7-school from Akkalkot to Korsegaon will accordingly stand set aside. This Petition stands disposed of accordingly with no order as to costs.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)